

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION

NO. 2:10-CV-23-FL

DALLIE CHERRY,)
)
Plaintiff,)
)
v.) ORDER
)
PERDUE FARMS, INCORPORATED;)
and STACY MILLS,)
)
Defendants.)

This matter comes before the court upon the parties' joint motion for clarification (DE # 25) and joint motion to suspend certain deadlines (DE # 26). For the reasons set forth below, these motions are granted.

At issue is the court's order entered December 27, 2010, in which the court granted in part and denied in part defendants' motion to dismiss and plaintiff's motion for leave to amend. Specifically, the court dismissed plaintiff's Title VII and state law claims, but allowed plaintiff "leave to amend her complaint to proceed with her cause of action under the Age Discrimination in Employment Act ('ADEA'), 29 U.S.C. §§ 621-634." Order at 1. The parties seek clarification as to whether plaintiff is to file the amended complaint previously submitted or a modified amended complaint reflecting the court's order that only the ADEA claim be allowed to proceed. They also seek to suspend the deadlines in that order until the court resolves this confusion.

In its order, the court ordered that each of plaintiff's claims not based on ADEA dismissed from this action. The court believes that this remains the case regardless of whether or not plaintiff

excises them from her proposed amended complaint. Nevertheless, in order to give the parties the requested direction in this matter, plaintiff is DIRECTED to file the modified amended complaint attached to the parties' motion for clarification. See Mot. for Clarification, Ex. 1. This modified amended complaint complies with the court's order that only the ADEA claim be allowed to proceed, and will further streamline proceedings in this matter.

In the original order, the court allowed the parties thirty (30) days within which to hold conference pursuant to Rule 26(f). Deadlines for the exchange of mandatory initial disclosures and the filing of a joint report and plan were set fourteen (14) days from that deadline. For good cause shown, the court extends those deadlines. The parties are DIRECTED to hold conference pursuant to Rule 26(f) within thirty (30) days of date of entry of the instant order providing clarification regarding plaintiff's amended complaint.* The deadlines for exchange of mandatory initial disclosures and the filing of a joint report and plan shall remain fourteen (14) days from this new 26(f) conference deadline.

SO ORDERED, this the 19th day of January, 2011.



LOUISE W. FLANAGAN
Chief United States District Judge

* Where the modified amended complaint already has been drafted and defendants have had the opportunity to review the same, the court is confident that both the modified amended complaint and defendant's answer will be filed well in advance of the Rule 26(f) conference.